

EMMET, MARVIN & MARTIN, LLP  
COUNSELLORS AT LAW



120 Broadway  
New York, New York 10271  
212-238-3000  
[www.emmetmarvin.com](http://www.emmetmarvin.com)

Paul T. Weinstein  
Partner  
Tel: 212-238-3090  
Fax: 212-238-3100  
[pweinstein@emmetmarvin.com](mailto:pweinstein@emmetmarvin.com)

**MEMO ENDORSED**

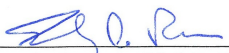
June 10, 2021

Via ECF

Hon. Edgardo Ramos  
United States District Judge  
U.S. District Court for the Southern District of New York  
40 Foley Square  
New York, New York 10007

Plaintiff is directed to file his response to  
Defendant BNY Mellon's letter by June 15, 2021.

It is SO ORDERED.

  
Edgardo Ramos, U.S.D.J.  
Dated: 06/10/2021  
New York, New York

Re: *David deMilhau v. The Bank of New York Mellon Corporation*,  
Civil Action No. 20-cv-11062 (S.D.N.Y.)(ER)

Dear Judge Ramos:

We represent defendant BNY Mellon, N.A. ("BNY Mellon"), as co-Trustee of the Dorothea H. de Milhau Revocable Trust dated March 18, 1996, as amended on March 29, 1996 (the "Trust").<sup>1</sup> As Your Honor will recall, this case concerns a Complaint filed *pro se* by plaintiff David de Milhau ("Mr. de Milhau") seeking, among other things, termination of the Trust and the distribution of the Trust's assets to him.

On May 13, 2021, the parties participated in a telephonic pre-motion conference with the Court regarding BNY Mellon's anticipated motion to dismiss the Complaint. During that conference, and in a letter submitted to the Court on April 27, 2021 (Dkt. No. 11) (the "BNY Mellon Pre-Motion Letter"), BNY Mellon explained that it generally agreed with Mr. de Milhau that, in light of the Trust's static annual expenses, diminishing assets, and the fact that Mr. de Milhau is the sole current beneficiary, a court of competent jurisdiction should terminate the Trust, modify its terms, and/or provide guidance on its future administration. BNY Mellon further explained that the proper forum for this matter is the Connecticut Probate Court for the District of Greenwich (the "Probate Court"), which has already exercised jurisdiction over the Trust. BNY Mellon further stated that it intended to petition the Probate Court for this relief following the pre-motion conference. Based on the parties' letters and the discussion at the May 13, 2021 conference, the Court stayed this case until August 13, 2021, at which time the parties are to update the Court on whether the matter was resolved and, if not, provide a briefing schedule for BNY Mellon's motion to dismiss. (*See* Dkt. No. 15).

<sup>1</sup> The Complaint incorrectly identifies the defendant as The Bank of New York Mellon Corporation, a holding company that has no connection to this matter.

EMMET, MARVIN & MARTIN, LLP

Earlier today BNY Mellon filed its Petition with the Probate Court (the “Petition”) seeking the relief described in the BNY Mellon Pre-Motion Letter and during the May 13, 2021 conference. Notice and a copy of the Petition will be served on all interested parties, which includes Mr. de Milhau, the charity remainder beneficiaries, and the Connecticut Attorney General. We have consulted with the Probate Court regarding the scheduling of a hearing on the Petition, and have been informed that the hearing will likely occur 6 to 8 weeks after today’s filing. Thus, it appears unlikely that the Petition will be resolved by August 13, 2021.

Therefore, in order to preserve the Trust’s resources as well as this Court’s, it is respectfully requested that this matter be stayed until resolution of the Petition in the Connecticut Probate Court, at which time the parties will update this Court and a determination can be made regarding whether further proceedings are necessary in the Southern District.

By email sent on June 9, 2021, we sought Mr. de Milhau’s consent to this request. We have not heard back from him in response to that email. There have been no prior requests to extend the stay of this case.

Respectfully submitted,  
Paul T. Weinstein  
Paul T. Weinstein

cc: Mr. David de Milhau  
(by ECF and email)